

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPHINE JONES,

Plaintiff,

v.

DECISION AND ORDER
04-CV-349S

JO ANNE B. BARNHART,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

1. Pro Se Plaintiff Josephine Jones challenges an Administrative Law Judge's ("ALJ") decision, dated June 9, 2003, wherein the ALJ denied Plaintiff's application for benefits after determining that Plaintiff was not disabled within the meaning of the Social Security Act ("the Act"). On November 23, 2004, Defendant filed a Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. For the reasons stated below, Defendant's motion is denied.

2. Plaintiff alleges that she became disabled on January 31, 1994, due to a seizure disorder, hypomagnesemia, a stomach disorder, and sluggishness. She contends that her seizures continue to render her unable to work, and that she is therefore entitled to Supplemental Security Income payments under the Act.

3. Plaintiff filed an application for Supplemental Security Income payments and Disability Insurance Payments on February 28, 2001. Her application was denied initially and on reconsideration. On or about April 2, 2003, the ALJ held a hearing at which Plaintiff testified. Thereafter, the ALJ denied Plaintiff's application in a written decision dated June 9, 2003.

4. Plaintiff appealed the ALJ's June 9, 2003 decision to the Appeals Council. In a notice dated March 18, 2004, the Appeals Council denied Plaintiff's request for review. (A.R. at 5.) However, in doing so, the Appeals Council reviewed an ALJ decision from February 25, 2001, not the June 9, 2003 decision that Plaintiff appealed.¹ Consequently, it is unclear whether the Appeals Council reviewed the ALJ's June 9, 2003 decision being challenged here. This case will therefore be remanded to the Commissioner of Social Security to give the Appeals Council the opportunity to review the ALJ's June 9, 2003 decision. Defendant's Motion for Judgment on the Pleadings is denied.

IT HEREBY IS ORDERED, that Defendant's Motion for Judgment on the Pleadings (Docket No. 5) is DENIED.

FURTHER, that this case is remanded to the Commissioner of Social Security for further proceedings consistent with this decision.

FURTHER, that the Clerk of the Court is directed to take the necessary steps to close this case.

SO ORDERED.

Dated: June 24, 2005
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge

¹One of Plaintiff's previous applications for benefits had been denied on January 25, 2001. Plaintiff failed to timely appeal that decision. The January 25, 2001 decision was not, however, the subject of Plaintiff's most recent appeal.